

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY                       
DEPUTY CLERK

FOR THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF TEXAS

**S A10CA0537**

# PETITION TO QUASH SUMMONS

COME NOW, the Petitioners, Bruce W. Gunkle and Sherilyn S. Le, files this Petition to Quash certain Internal Revenue Service summon issued by the Department of Treasury of the United States through the Internal Revenue Service, and, in support of this Petition, would show the Court the following:

## JURISDICTION

2. This Court has jurisdiction over this proceeding pursuant to Title 26 U.S.C. Section 7609(h).

1       3. All of the Third Party Record Keepers are located  
2 within this district.

3                               FACTUAL BACKGROUND

4       4. The Third Party Record Keeper is Wells Fargo Bank, NA,  
5 2700 S. Price Road, Chandler, AZ 85248. The summons is  
6 directed to Bruce W. Gunkle and Sherilyn S. Gunkle and the  
7 records sought by the summons are allegedly related to them and  
8 also an independent church records of The City of Refuge  
9 Christian Fellowship, an unincorporated ecclesiastical  
10 association. (Exh. A)

11       5. Pastor Bruce W. Gunkle and Sherilyn S. Gunkle were  
12 notified by letter that their 2007 individual tax return was  
13 being examined by the Internal Revenue Service with Revenue  
14 Agent Ms. Patience. (Exh. B)

15       6. Petitioners, along with their attorney met with the  
16 Internal Revenue Agent Ms. Patience in March 2010 concerning  
17 their 2007 return and provided all the information including the  
18 personal bank records for 2007 they requested and satisfied the  
19 inquiries of the examination.

20       7. Back in April 29, 2009, the Gunkles received a letter  
21 from the Internal Revenue Service stating that there was an  
22 error on their 2008 Federal Income Tax Return and included the  
23 amount that they owed. Mr. Gunkle complied with the notice and  
24 sent a check to the Internal Revenue Service in the amount that  
25 they showed owed for 2008 to satisfy the error. (Exh. C)

1        8. On April 28 2010, Ms. Patience summoned petitioners  
2 bank records from Wells Fargo Bank for period January, 2008 thru  
3 December 2008 and received from third party Wells Fargo Bank all  
4 their personal Savings Account Records and Checking Account  
5 Records for that period even though that period was satisfied by  
6 the check sent to the Internal Revenue Service.

7        9. And now again, in the subject summons, in June 7,  
8 2010, Ms. Patience has summoned third party Wells Fargo Bank for  
9 the petitioner's bank records for the same period of 2008 that  
10 is already in her possession.

11       10. In the subject summons requested to be quashed she  
12 stated "Included but not limited to any and all the bank church  
13 records..... of The City of Refuge Christian Fellowship church",  
14 an unincorporated ecclesiastical association that is not related  
15 to the petitioners.

16       11. Ms. Patience did not disclose the reason or the extent  
17 necessary for the request of the bank records of the church. The  
18 church is not being audited and Ms. Patience is going beyond her  
19 authority provided in 26 U.S.C. §7611. In the audit process she  
20 acknowledged that The City of Refuge Christian Fellowship is a  
21 church and that it is a separate entity from Pastor Gunkle.

22       12. The City of Refuge Christian Fellowship church is an  
23 unincorporated ecclesiastical association that conducts  
24 religious meetings and instruction, has regular church meetings  
25

1 and members, and is an exempt organization which has been  
2 recognized by the Internal Revenue Service.

3 13. Pastor Gunkle is an agent of the church as its Pastor.  
4 His personal tax return does not encompass the church. The  
5 church is a separate legal entity from him as an individual.

6 14. The donation to the church by petitioners that was  
7 questioned in the March audit was legally exempt on petitioners  
8 2007 return per IRC § 170 of the code and acceptable in the  
9 audit by Ms. Patience.

10 LEGAL AND FACTUAL BASIS TO QUASH THIRD PARTY SUMMONS

11 STANDARD OF REVIEW

12 15. A Federal District Court must review the summons at  
13 issue and the facts surrounding its issuance under a four-point  
14 test formulated by the United States Supreme Court in United  
15 States v. Powell. The District Court, in order to grant  
16 enforcement of an original summons or deny quash of a third  
17 party summons under 26 U.S.C. Section 7609(h) must find from all  
18 facts that:

19 1.) The summons was issued in good faith.

20 2.) All steps required by the Internal Revenue Code and  
21 all other pertinent law have been completed and/or complied with  
22 by the Internal Revenue Service.

23 3.) The summoned information is evidence which is relevant  
24 in a investigation carried out for a proper purposes such as to  
25

1 determine the taxpayer's correct tax liability and/or to collect  
2 tax obligations owed to the United States government.

3 4.) The information sought is not already in the  
4 possession of the Internal Revenue Service.

5 16. Failure to follow or complete all steps required by  
6 the Internal Revenue Code the summons are invalid and void.  
7 (United States v. Powell, 379 U.S.48, 57-58, 85 S. Ct. 248, 13  
8 L. Ed. 2d 122 (1964) Crystal v, United States, 172 F.3d 1141,  
9 1143 (9<sup>th</sup> Cir. 1999)

10 17. The Internal Revenue must comply with the terms of  
11 Privacy Act (5 U.S.C. Section 552a(e)(3)(A)-(D), prior to  
12 unilaterally terminating its efforts to audit petitioner under  
13 routine procedures.

14 18. Respondent has resorted to the summons without proper  
15 compliance with Internal Revenue Code, 26USC Section 7521(b), as  
16 well as the Privacy Act.

17 19. That Respondent has denied Petitioner due process of  
18 law by Respondent's failure to supply the information required  
19 under 5 USC Section 522a(e)(3)(A) - (D).

20 20. Respondent is seeking records of an exempt  
21 organization under cover of an examination of individuals' tax  
22 returns.

23 21. Respondent has not followed the procedures required by  
24 IRC Section 7611 to examine the ministry's records.  
25

1        22. Unless exempted by other law, all administrative  
2 agencies of the United States government including the Internal  
3 Revenue must comply with the terms of Federal Privacy Act (5 USC  
4 Section 552) which requires government agencies, generally to  
5 make disclosures concerning: (1) agency's power to demand  
6 information and force its productions; (2) a citizen's  
7 obligation to provide such information to the federal agency and  
8 the consequences for not doing so; and (3) the use which it will  
9 be made of the information provided to the federal agency. It  
10 is anticipated that the Internal Revenue Service will attempt to  
11 argue in this proceeding that it is exempted from the terms of  
12 the Federal Privacy Act. Petitioners aver that any exemptions  
13 from the Privacy Act which the Internal Revenue Services may  
14 claim do not excuse the services from providing the information  
15 disclosures set out above.

16  
17        23. However, even if the Federal Privacy Act is a general  
18 statute requiring disclosure and the terms of the Internal  
19 Revenue Code are interpreted to be a special statute which  
20 overrides a general statute in the event of conflict, Title 26  
21 U.S.C. Section 7521(b) requires that the Internal Revenue  
22 Service provide all the same disclosures to taxpayers when the  
23 Service demands an audit of the taxpayer's books and records.

24        25. Revenue Agent Ms. Patience did not comply with the  
25 Privacy Act and/or 26 U.S.C. Section 7521(b) because he did not

1 disclose the statutory basis empowering the Service to force the  
2 petitioners to provide information at the audit he requested.

3 26. Compliance with Section 7521(b) is a "step required by  
4 the Code" under the Powell Test set out above. The Internal  
5 Revenue Service is not allowed to resort to the service of a  
6 summons whether original or third party --- in an effort to  
7 obtain records concerning the taxpayer without complying with  
8 and observing all steps necessary to obtain an audit of the  
9 taxpayer where it might obtain the same information. Third  
10 party records which are issued without the Service's compliance  
11 with the necessary steps to obtain an audit from the taxpayer  
12 are invalid and void.

13 27. In the present case, Internal Revenue Agent Ms.  
14 Patience and the Internal Revenue Service have failed to follow  
15 all steps required by the Code prior to the issuance of the  
16 third party summons, therefore the third party summon in  
17 question should be quashed.  
18

19 BAD FAITH

20 28. The third party summons should also be quashed because  
21 they were issued in "bad faith." If Internal Revenue Agent Ms.  
22 Patience failure to comply with the Privacy Act was intentional,  
23 the "institutional posture" of the Internal Revenue Service  
24 constitutes bad faith under the Powell test.  
25



1           29. Then at the audit Internal Revenue Agent Ms. Patience  
2 did not conduct a proper personal audit of the petitioners. She  
3 went beyond her authority by conducting an examination of the  
4 church violating the provision of the statute enacted in 1984  
5 setting forth the procedures the government must follow and the  
6 standards it must meet when conducting tax inquiries and  
7 examinations of churches. 26 U.S.C. § 7611.

8           30. The issuing of the Third Party Summons to Wells Fargo  
9 Bank for the church deposit slips, signature cards and other  
10 documents contained in the bank records identify the members of  
11 and contributors to The City of Refuge Christian Fellowship  
12 Church, and if the Internal Revenue Service were allowed access  
13 to this information, some of those who would otherwise join or  
14 contribute to the ministry would be discouraged from doing so  
15 out of fear of retaliation by the Internal Revenue Service.  
16 This discouragement would constitute an infringement of the  
17 churches First Amendment Right of freedom of association and is,  
18 therefore, impermissible. (NAACP v, Alabama, 357 U.S. 449, 78 S.  
19 Ct. 1163, 2L. Ed 2d 1488(1958) (United States V. Citizens State  
20 Bank, 612 F.2d 1091 )8<sup>th</sup> Cir. 1980.

21  
22           31. The Church Audit Procedures Act, section 1034,  
23 provides that before the IRS may begin an inquiry into the tax  
24 status of any organization claiming to be a church, the service  
25 must satisfy certain prerequisites. Among other things, it must



1 articulate a reasonable belief in the need for an investigation  
2 and provide special notice to the church. (26 U.S.C. §7611(a)(1))  
3 (United States v. Church of Scientology Western U.S., 973 F.2d  
4 715 (9<sup>th</sup> Cir. 1992)).

5 CONCLUSION

6 WHEREFORE, petitioners pray that this Honorable Court  
7 entertain this petition and, after due consideration of same,  
8 that this Court enters an Order:

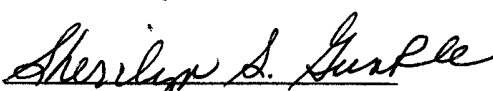
9 (1) quashing the third party summons described in this  
10 petition;

11 (2) awarding petitioners their costs; and

12 (3) awarding petitioners such other and further relief,  
13 both in law and in equity, to which they may show themselves to  
14 be justly entitled.

15 SUBMITTED THIS 28th day of June, 2010.

16  
17  
18   
Bruce W. Gunkle

19   
20 Sherilyn S. Gunkle  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

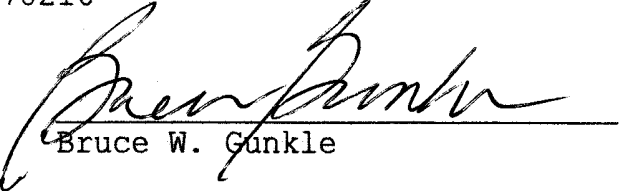
I certify that a true and correct copy of the foregoing document was sent U.S. postage paid Certified Mail, Return Receipt Request, on this 28th day of June, 2010 to:

Wells Fargo Bank, NA  
2700 S. Price Road  
Chandler, AZ 85248

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Bruce W. Gunkle